

# United States District Court District of Massachusetts

ERNEST N. BENJAMIN,  
Petitioner,

V.

CIVIL ACTION NO. 2004-11025-JLT

LUIS SPENCER,  
Respondent.

## ***ORDER ON PETITIONER'S MOTION TO AMEND PETITION OF HABEAS CORPUS (#26)***

COLLINGS, U.S.M.J.

It is ORDERED that the Petitioner's Motion to Amend Petition of Habeas Corpus (#26) be, and the same hereby is, DENIED. The Court has already ruled that the petition in the instant case, i.e. C.A. 2004-11025-JLT, is a successive petition to the petition in C.A. 2001-10748-JLT. The petitioner has appealed that ruling.<sup>1</sup> Amending the petition in C.A. 2004-11025-JLT would not change anything - that petition would still be "successive" to the earlier petition.

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<sup>1</sup>

The appeal has been docketed in the First Circuit Court of Appeals as Case No. 05-1589.

Petitioner avers that he no longer has the papers from the earlier case. Accordingly, the Clerk is mailing to the petitioner, along with a copy of the within Order, copies of the following documents from the file of C.A. 2001-10748-JLT.

- (1) Current docket
- (2) Petition (#2)
- (3) Memorandum in Support of Petition, Etc. (#3)
- (4) Judge Bowlers' Report and Recommendation dated January 25, 2002 containing Judge Tauro's March 26, 2002 endorsement.
- (5) Judge Bowlers' Report and Recommendation dated April 12, 2002 containing Judge Tauro's August 22, 2002 endorsement.
- (6) Judgment in C.A. 2001-10748-JLT entered May 5, 2005.

*/s/ Robert B. Collings*  
ROBERT B. COLLINGS  
United States Magistrate Judge

June 30, 2005.